

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CARGILL INCORPORATED	DOCKET NOS. DRU-00-1 WRU-00-9
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**ORDER REFUSING REQUEST FOR DECLARATORY ORDER
AND GRANTING WAIVER**

(Issued February 17, 2000)

On January 19, 2000, Cargill Incorporated (Cargill) filed with the Utilities Board (Board) a request for declaratory order or, in the alternative, a request for waiver of the generating certificate requirements of Iowa Code chapter 476A. Cargill filed additional information on February 3, 2000. The Consumer Advocate Division of the Department of Justice filed a response on February 1, 2000, stating it did not object to the Board granting the waiver request.

In 1981 Cargill purchased the Bridgeport Generating Station (Bridgeport) from Iowa Southern Utilities Company, which later merged with IES Utilities Inc. Bridgeport began operating in the 1950s and originally had three coal-fired boilers and three 20 MW generators. After purchasing Bridgeport, Cargill transported one generator to an out-of-state plant and, in 1985, replaced the turbine on the second unit. The third unit has not been used. Cargill now plans to replace the turbine on the third unit to make it operational. The nameplate capacity of the third unit will remain 20 MW. Total nameplate capacity at Bridgeport will be 40 MW. Cargill states that the turbine replacement is necessary for its corn processing operations.

Cargill requests a declaratory order that it is exempt from the requirements of Iowa Code chapter 476A. In support of its request, Cargill cites Iowa Code § 476A.2, which states:

This chapter shall not apply to an electric power generating plant, or combination of plants as a single site, with a total capacity of more than twenty-five but less than one hundred megawatts of electricity if the owner or operator prior to January 1, 1990, has met all of the following conditions:

- a. Acquired a site for the facility.
- b. Publicly announced the intention to construct a facility at the site.
- c. Let contracts for major components of the facility.

Cargill argues that because the new turbine will not change nameplate capacity, it meets the statute's requirements because Bridgeport was purchased prior to 1990.

Cargill's argument ignores Iowa Code § 476A.2, which provides that a "significant alteration," as determined by the Board, triggers Board review. The statute does not define "significant alteration," other than to state that it includes a change in the type of fuel used.

Because Cargill has requested, in the alternative, a waiver of the requirements of chapter 476A, identified as Docket No. WRU-00-9, the Board will not issue the requested declaratory order. The applicability of chapter 476A to Cargill's planned turbine replacement is more appropriately addressed in Cargill's waiver request. 199 IAC 4.9(1)"4."

Iowa Code chapter 476A applies to any "facility" with a total capacity of 25 MW or more. "Facility" is further defined as a single plant or combination of plants at

a single site. Iowa Code § 476A.1(5). Cargill's two units, located at the same site, will have a total capacity of 40 MW.

However, Iowa Code § 476A.15 specifically grants the Board the authority to waive any of the requirements of chapter 476A for facilities with a capacity of 100 MW or less if the Board determines the public interest will not be detrimentally affected. In determining whether a waiver is appropriate, the Board will examine the decision criteria for granting a generating certificate found in Iowa Code § 476A.6.

Three of the criteria, which relate to having a comprehensive energy management program, consideration of long-term electric supply, and examination of feasible alternatives to generation, apply only to rate-regulated utilities. Cargill is not a rate-regulated utility as defined by Iowa Code § 476.1.

The remaining three decision criteria are 1) whether the facility is required, 2) whether the applicant will construct, maintain, and operate the facility pursuant to the provisions of the certificate, and 3) whether the construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact. Cargill in its waiver request has provided sufficient information to establish the need for the facility in its operations, the first remaining criteria. With respect to the second criteria, Chapter 476A provides that if there is a significant alteration to the facility, Board approval is required. Because this requirement is statutory, it does not need to be restated in a certificate.

The final decision criterion relates primarily to environmental factors. Environmental permits are within the purview of the Department of Natural Resources (DNR) and the Board has traditionally deferred to DNR's expertise in

these areas and has found this criteria satisfied if DNR issues the appropriate permits. The Board finds that the waiver request adequately addresses the decision criteria for a generating certificate and will therefore waive the requirements of Chapter 476A. The waiver will not detrimentally affect the public interest. However, the Board reminds Cargill that it must obtain any applicable environmental permits and comply with any other state and local regulations, such as zoning or land use restrictions.

IT IS THEREFORE ORDERED:

1. The Utilities Board refuses to issue a declaratory order pursuant to the request filed by Cargill Incorporated on January 19, 2000, on the ground that the question presented can more appropriately be resolved in Cargill's alternative waiver request. 199 IAC 4.9(1)"4."

2. The request for waiver, identified as Docket No. WRU-00-9, filed by Cargill Incorporated on January 19, 2000, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 17th day of February, 2000.